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 U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIF.  
 SAN FRANCISCO, CALIF.

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15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA

17 BRADY ADAMS, Individually and on )  
 Behalf of All Others Similarly Situated, )  
 18 Plaintiff, )

19 vs.  
 20

21 BIOLASE, INC., FEDERICO  
 PIGNATELLI and FREDERICK D.  
 FURRY,  
 22 Defendants.

VIA FAX

Case No. SACV 13 - 01300 JST (FFMx)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF  
 THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

24  
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 26  
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1 Plaintiff Brady Adams ("Plaintiff"), individually and on behalf of all other  
2 persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's  
3 complaint against Defendants, alleges the following based upon personal knowledge  
4 as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other  
5 matters based on the investigation conducted by and through Plaintiff's attorneys,  
6 which included, among other things, a review of Securities and Exchange  
7 Commission ("SEC") filings by Biolase, Inc. ("Biolase" or the "Company"), as well  
8 as conference call transcripts and media and analyst reports about the Company.  
9 Plaintiff believes that substantial evidentiary support will exist for the allegations set  
10 forth herein after a reasonable opportunity for discovery.

#### 11 NATURE OF THE ACTION

12 1. This is a securities class action on behalf of all purchasers of the common  
13 stock of Biolase between January 7, 2013 and August 12, 2013, inclusive (the "Class  
14 Period"). Plaintiff seeks to pursue remedies against Biolase and several of its most  
15 senior executives under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the  
16 "Exchange Act"), and Rule 10b-5 promulgated thereunder.

#### 17 JURISDICTION AND VENUE

18 2. Jurisdiction is conferred by §27 of the Exchange Act. The claims  
19 asserted herein arise under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5  
20 promulgated thereunder. This Court has jurisdiction over the subject matter of this  
21 action under 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

22 3. Venue is proper in this District pursuant to §27 of the Exchange Act and  
23 28 U.S.C. §1391(b) as the Company is headquartered in this District and the alleged  
24 misconduct was transacted in and emanated from this District.

25 4. In connection with the acts alleged in this Complaint, Defendants,  
26 directly or indirectly, used the means and instrumentalities of interstate commerce,  
27 including, but not limited to, the mails, interstate telephone communications and the  
28 facilities of the national securities markets.

**PARTIES**

5. Plaintiff Brady Adams, as set forth in the accompanying Certification, which is incorporated by reference herein, purchased securities of Biolase during the Class Period and has been damaged thereby.

6. Defendant Biolase, headquartered in Irvine, California, manufactures and distributes dental lasers. The Company was founded as Biolase Technology, Inc. in 1984 and changed its name to Biolase, Inc. in 2012. The Company's common stock is listed on the NASDAQ, an efficient market, under the ticker symbol "BIOL" and, as of August 2, 2013, the Company had approximately 34 million shares of its common stock outstanding.

7. Defendant Federico Pignatelli ("Pignatelli") is, and was throughout the Class Period, Biolase's Chief Executive Officer ("CEO"), a director and Chairman of its Board of Directors (the "Board").

8. Defendant Frederick D. Furry ("Furry") is, and was throughout the Class Period, Biolase's Chief Financial Officer ("CFO").

9. The Defendants referenced above in ¶¶7-8 are referred to herein as the "Individual Defendants." Biolase and the Individual Defendants are referred to herein, collectively, as "Defendants."

**CLASS ACTION ALLEGATIONS**

10. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all purchasers of the common stock of Biolase during the Class Period (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

11. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Biolase common stock and other publicly-traded securities were actively traded on the NASDAQ. While the exact

1 number of Class members is unknown to Plaintiff at this time and can only be  
2 ascertained through appropriate discovery, Plaintiff believes that there are hundreds of  
3 thousands of members in the proposed Class. Record owners and other members of  
4 the Class may be identified from records maintained by Biolase or its transfer agent  
5 and may be notified of the pendency of this action by mail, using the form of notice  
6 similar to that customarily used in securities class actions.

7 12. Plaintiff's claims are typical of the claims of the members of the Class as  
8 all members of the Class are similarly affected by Defendants' wrongful conduct in  
9 violation of federal law that is complained of herein.

10 13. Plaintiff will fairly and adequately protect the interests of the members of  
11 the Class and has retained counsel competent and experienced in class and securities  
12 litigation.

13 14. Common questions of law and fact exist as to all members of the Class  
14 and predominate over any questions solely affecting individual members of the Class.  
15 Among the questions of law and fact common to the Class are:

16 (a) whether the Exchange Act was violated by Defendants as alleged  
17 herein;

18 (b) whether statements made by Defendants misrepresented material  
19 facts about the business, operations and management of Biolase; and

20 (c) to what extent the members of the Class have sustained damages  
21 and the proper measure of damages.

22 15. A class action is superior to all other available methods for the fair and  
23 efficient adjudication of this controversy since joinder of all members is  
24 impracticable. Furthermore, as the damages suffered by individual Class members  
25 may be relatively small, the expense and burden of individual litigation make it  
26 impossible for members of the Class to individually redress the wrongs done to them.  
27 There will be no difficulty in the management of this action as a class action.

28

## BACKGROUND

16. Defendant Biolase is a biomedical company that develops, manufactures, and markets lasers in dentistry and medicine in the United States and internationally. The Company offers WaterLase systems for cutting soft and hard tissue; and diode laser systems, which are used in soft tissue, pain therapy, and cosmetic procedures, such as teeth whitening. Dentists, periodontists, endodontists, oral surgeons, and other specialists use its laser dental systems to perform a range of dental procedures, including cosmetic and complex surgical applications, using lasers designed to reduce pain during oral procedures. Dental lasers use a light beam to cut away tooth decay before filling cavities, purportedly resulting in less vibration and pain than traditional drills.

17. The Company also markets and distributes dental imaging equipment comprising extra-oral and intra-oral dental digital imaging devices, as well as provides precision intuitive diagnosis and treatment planning solutions. In addition, it offers medical systems comprising Diolase 10 Diode Laser for therapeutic applications consisting of temporary pain relief; topical heating for the purpose of temporarily relieving minor muscle and joint pain and stiffness, minor arthritis pain, muscle spasm, minor sprains and strains, and minor muscular back pain; temporarily increasing local blood circulation; and temporarily relaxing muscles. Further, the Company manufactures and sells disposable products and accessories for laser systems, as well as markets flexible fibers and hand pieces.

18. The Company's core product offering is its two categories of laser technologies: WaterLase and its diode system. The WaterLase line of products has a large patent portfolio protecting the technology from competition, and is by far the Company's best-selling group of products (including four versions of the laser systems including WaterLase iPlus (the most advanced WaterLase technology), WaterLase MDX, WaterLase MD Turbo, and the introductory portable iLase).

1           19. After its commercial launch in 2006, Biolase achieved sales growth in the  
2 WaterLase line of products despite an often contentious relationship with Henry  
3 Schein, Inc. ("Henry Schein"), the former exclusive distributor of the WaterLase  
4 system. In the spring of 2012, Biolase settled the dispute with Henry Schein and  
5 began moving toward to a direct selling model for most of those systems, and  
6 repurchased the bulk of unsold units from Henry Schein.

7           20. In order to fund this, on May 24, 2012 the Company entered into two  
8 revolving credit facility agreements with Comerica Bank ("Comerica") (the "Credit  
9 Agreements"), as amended on August 6, 2012 ("Amendment No. 1"), which provided  
10 for borrowings against certain domestic accounts receivable and inventory, as set forth  
11 in the \$4.0 million revolving credit facility agreement (the "Domestic Revolver"), and  
12 borrowings against certain export related accounts receivable and inventory, as set  
13 forth in the \$4.0 million revolving credit facility agreement (the "Ex-Im Revolver"),  
14 for a combined aggregate commitment of borrowings up to \$8.0 million. The Credit  
15 Agreements mature on May 1, 2014 and are secured by substantially all assets now  
16 owned or hereinafter acquired by Biolase. The Credit Agreements require compliance  
17 with certain financial and non-financial covenants. If a default occurs, Comerica has  
18 the authority to declare the amounts outstanding under the Credit Agreements  
19 immediately due and payable.

20           21. Lockbox arrangements under the revolving bank facilities provide that  
21 substantially all of the income generated by Biolase is deposited directly into lockbox  
22 accounts and then swept into cash management accounts for the benefit of Comerica.  
23 Cash is disbursed from Comerica to Biolase only after payment of the applicable debt  
24 service and principal. Biolase's obligations are generally secured by substantially all  
25 of its assets.

26           22. Despite that as fiscal 2013 got underway, the Company had experienced  
27 net losses of millions of dollars for each of the preceding three years and had an  
28 accumulated deficit of approximately \$112.3 million, Biolase claimed to be finished



1 reorganizing itself into a direct seller and on track to achieving a turnaround of its  
2 financial performance and achieving cash positive operations in fiscal 2013.

3 **DEFENDANTS' FALSE AND MISLEADING**  
4 **CLASS PERIOD STATEMENTS**

5 23. The Class Period starts on January 7, 2013. On that day, before the  
6 opening of trading, Biolase issued a press release entitled "Revenue Expected to  
7 Exceed \$18 Million for 2012 Fourth Quarter – Revenue Growth Driven by Direct  
8 Sales to End-Users in North America," which stated, in pertinent part, that "based on a  
9 preliminary review of its financial performance for the fourth quarter ended December  
10 31, 2012, the Company expect[ed] to exceed its previous guidance and report net  
11 revenue in excess of \$18 million." The press release also quoted Defendant Pignatelli  
12 lauding the strong growth in demand for Biolase's product offerings and the strong  
13 financial performance that foretold during fiscal 2013, with Defendant Pignatelli  
14 stating, in pertinent part, as follows:

15 We are very pleased with the strong growth in our core dental laser  
16 products and the trends that are accelerating with the adoption of our  
17 WaterLase® technology and diode laser systems. Our strong revenue  
18 growth in the 2012 fourth quarter compared to the prior year period was  
19 primarily due to the increased demand for our flagship WaterLase  
20 iPlus™ and our new EPIC 10™ soft tissue diode laser. Revenues were  
21 also bolstered by sales of our mid-priced WaterLase products and our  
22 digital imaging products, including the initial sales of our CAD/CAM  
23 systems.

24 After closing 2012 on a strong note, we are very excited to look ahead to  
25 2013 and beyond as we expect a substantial acceleration in the adoption  
26 of lasers, Specifically our core WaterLase technology, in dental  
27 practices around the world over the next three to five years. *We are very*  
28 *confident that all-tissue lasers will become the standard of care in*

1 *dental practices worldwide. Furthermore, as we move forward in 2013*  
 2 *we do not expect to be troubled with the multitude of extraneous issues*  
 3 *that we faced throughout our challenging turnaround, including*  
 4 *exiting our exclusive global distribution relationship with Henry*  
 5 *Schein, Inc. (NASDAQ: HSIC), and moving to a direct sales model in*  
 6 *North America and multi-distributor model internationally.*<sup>1</sup>

7 24. The price of the Company's common stock spiked on these statements,  
 8 increasing nearly 20% to close at \$2.35 per share on January 7, 2013, on unusually  
 9 high trading volume of 784,400 shares traded.

10 25. On January 22, 2013, the Company issued a press release entitled  
 11 "BIOLASE Expects to Report Positive Cash Flow From Operations for Q4 2012 –  
 12 BIOLASE Expects to Continue to Generate Positive Cash Flow From Operations for  
 13 2013 Overall." The press release stated that "based on preliminary unaudited  
 14 financial results, the Company expect[ed] to report that it generated positive cash flow  
 15 from operations for Q4 2012," and quoted Defendant Pignatelli lauding those results,  
 16 stating, in pertinent part, as follows:

17 *It is rewarding to see that our restructuring efforts over the past two*  
 18 *years have enabled us to turn the Company around and that we are*  
 19 *making significant progress toward achieving our financial goals. The*  
 20 *trends we are seeing in the adoption of dental lasers also give us*  
 21 *confidence in achieving continued double-digit growth of our core*  
 22 *dental franchise. Based on our current plans, we expect the Company*  
 23 *will continue to generate positive cash flow from operations for the*  
 24 *overall year ending December 31, 2013.*

25 26. On February 6, 2013, before the opening of trading, Biolase issued a  
 26 press release entitled "BIOLASE Receives FDA Clearance for Its 940nm Diolase 10

27 \_\_\_\_\_  
 28 <sup>1</sup> All emphasis in bold and italics is added unless otherwise noted.



1 Diode Soft Tissue Laser for a Broad Spectrum of Medical Procedures – Clearance for  
 2 Over 80 Procedures in 19 Additional Medical Markets.” The press release quoted  
 3 Defendant Pignatelli stating, in pertinent part, that “[c]learance for our Diolase 10 is  
 4 the first step in enabling us to *leverage our recently released, next-generation 940nm*  
 5 *EPIC 10™ modular diode soft tissue dental laser platform and consumable*  
 6 *business across a wide range of multi-billion dollar medical markets with*  
 7 *appropriate strategic partners,*” and quoted Defendant Furry stating “[t]his is an  
 8 exciting time at BIOLASE as we *continue to expand the capabilities, applications,*  
 9 *and indications for our core technologies* so that they can be leveraged within our  
 10 core dental market as well as into a number of other promising medical and veterinary  
 11 markets.”

12 27. The price of Biolase common stock again spiked on this news, increasing  
 13 another 20% to close at \$3.35 per share that day on extremely high trading volume of  
 14 more than three million shares trading, or more than 51 times the average daily trading  
 15 volume over the preceding ten trading days.

16 28. On February 28, 2013, Biolase declared a one-half percent stock dividend  
 17 payable on March 29, 2013 to stockholders of record as of March 15, 2013.

18 29. On March 6, 2013, Biolase issued a press release entitled “BIOLASE  
 19 Reports 2012 Fourth Quarter, Year-End Results – Net Revenue Increases 45.0% to  
 20 \$19.1 Million, Quarter Over Quarter; Core WaterLase Unit Sales Increase 42.0%,  
 21 Quarter Over Quarter; Net Income of \$1.0 Million – \$0.03 per share – in Q4 2012;  
 22 Non-GAAP Net Income of \$1.7 Million – \$0.05 per Share -- in Q4 2012; **2013 Q1**  
 23 ***Revenue Guidance of \$14 Million to \$15 Million; 2013 Annual Revenue Guidance***  
 24 ***of \$68 Million to \$72 Million.***” To buttress that strong first quarter and fiscal 2013  
 25 financial guidance, the press release quoted Defendant Pignatelli stating, in pertinent  
 26 part, as follows:

27 *For the past two years, BIOLASE has undergone a radical*  
 28 *restructuring, which was substantially completed at year-end 2012.*

1 Now we can concentrate on continued execution and the meaningful  
2 expansion of our business in 2013 and beyond.

3 Overall 2012 was a year of execution where we met or exceeded our  
4 guidance throughout the year and went on to generate cash from  
5 operations in the fourth quarter. We have expanded our offerings of  
6 internally developed lasers and in-licensed cone beam and CAD/CAM  
7 imaging products while significantly strengthening our intellectual  
8 property and patent portfolio. As a result of these efforts, our annual  
9 revenue for 2012 increased significantly over 2011 and more than  
10 doubled that of 2010. With a number of solid initiatives in place,  
11 including new product launches, the recent approval of over 80 new  
12 procedures in 19 additional medical markets, and the launch of EPIC V-  
13 Series in to the veterinary market, *we expect BIOLASE to continue to*  
14 *grow strongly in 2013.*

15 The press release also quoted Defendant Furry stating, in pertinent part, as follows:

16 The number of WaterLase systems sold increased by a larger percentage  
17 than WaterLase revenues quarter over quarter because of our strategy to  
18 offer systems of varying capabilities at multiple price points. The iPlus  
19 is our flagship product and our primary revenue driver, and *we expect*  
20 *this to continue in 2013.* By offering multiple product configurations  
21 across a range of price points, *we believe we can attract more*  
22 *customers, drive adoption, and generate more significant product and*  
23 *consumables revenue.*

24 \* \* \*

25 As expected, sales of diode laser systems increased significantly in the  
26 fourth quarter, and *we anticipate that the EPIC 10 will continue to be a*  
27 *strong contributor to revenue in 2013 and beyond.* We also believe that  
28 the low price point of our EPIC diode soft-tissue laser system *will*

1 *continue to broaden the demand for lasers and create an up-sell*  
2 *opportunity for our more expensive, all-tissue WaterLase systems.*

3 The press release also provided the following “Financial Outlook” for fiscal 2013:

4 For the 2013 first quarter, BIOLASE expects net revenue of  
5 approximately \$14.0 million to \$15.0 million. The midpoint of \$14.5  
6 million reflects expected growth of approximately 18% as compared to  
7 the 2012 first quarter. After the 2013 first quarter the Company does not  
8 plan to provide quarterly guidance for the rest of 2013.

9 *For the year ending December 31, 2013, the Company expects net*  
10 *revenue of approximately \$68 million to \$72 million. The midpoint of*  
11 *\$70 million represents a 22% increase over 2012 net revenue and*  
12 *would also represent record revenue for the Company. The Company*  
13 *also expects to generate cash from operations for the year ending*  
14 *December 31, 2013.*

15 30. During the conference call held with investors later on the evening of  
16 March 6, 2013, Biolase made more positive comments about the strength of its  
17 business and finances and demand for its product offerings.

18 31. On this news, the Company’s stock price again spiked when trading  
19 resumed on March 7, 2013, closing up that day at \$4.42 per share, on unusually high  
20 trading volume of more than 1.4 million shares trading.

21 32. On March 15, 2013, Biolase filed its annual financial report for its fiscal  
22 year ended December 31, 2012 on Form 10-K with the SEC. The Form 10-K stated,  
23 in pertinent part, that “*the cash generated from operations and the borrowings*  
24 *available under the lines of credit with Comerica Bank [would] be sufficient to fund*  
25 *[Biolase’s] working capital requirements for 2013*” and that “[a]s of December 31,  
26 2012, the Company was in compliance with [its debt] covenants” under the Comerica  
27 lines of credit. The Form 10-K was signed and certified as to veracity under §§302  
28 and 906 of the Sarbanes Oxley Act of 2002 by the Individual Defendants.

1        33. On April 30, 2013, Biolase issued its 2013 annual proxy statement to  
2 shareholders, setting a June 6, 2013 date for Biolase's annual meeting of shareholders  
3 ("2013 AGM"). Among other things, Defendants would seek shareholder approval at  
4 the 2013 AGM to amend Biolase's 2002 Stock Incentive Plan to increase the shares of  
5 common stock reserved for issuance thereunder by 800,000 shares. As of March 28,  
6 2013, options to acquire only 86,473 shares of common stock remained available for  
7 issuance of the 6,950,000 options previously authorized under the 2002 Stock  
8 Incentive Plan. Option grants to Defendant Pignatelli during fiscal 2012 alone far  
9 exceeded the number of options remaining for issuance under the 2002 Stock  
10 Incentive Plan, with Defendant Pignatelli having been granted 100,000 options in  
11 November 2012. As shareholders would be apprehensive about authorizing such a  
12 significant increase in options available for distribution under the 2002 Stock  
13 Incentive Plan if they knew the Company faced a liquidity crisis forcing it to further  
14 dilute the outstanding Biolase stock by issuing additional capital to raise funds, the  
15 pendency of the shareholder vote on increasing the number of shares outstanding  
16 under the 2002 Stock Incentive Plan provided Defendants with further incentive to  
17 conceal the Company's pending financial doom.

18        34. On May 7, 2013, Biolase issued a press release entitled "Biolase Reports  
19 2013 First Quarter Results – Net Revenue Increases 19% to \$14.6 Million, Quarter  
20 over Quarter – Laser System Revenue Increases 9%, Quarter over Quarter – Imaging  
21 Revenue Increases 619%, Quarter over Quarter – ***2013 Annual Revenue Guidance***  
22 ***Reiterated at \$68 Million to \$72 Million – Expects to Generate Cash from***  
23 ***Operations for 2013 Overall – Gross Profit of 40% in Q1; Projected to Return to***  
24 ***Normalized Levels of 44% to 46%.***" The press release quoted Defendant Pignatelli  
25 emphasizing the Company's strong first quarter 2013 financial results, stating, in  
26 pertinent part, as follows:

27        While our overall revenue growth was slightly above the midpoint of our  
28 guidance, it is to be noted that certain domestic product revenues

1 generated from our WCLI Super Symposium held March 21-24 were not  
2 recognized until after the close of the first quarter. The 2013 first quarter  
3 was also heavily geared toward international revenues as a result of the  
4 AEEDC Dubai held in February and the bi-annual International Dental  
5 Show held in early March. Our international revenues have grown as a  
6 result of these efforts and BIOLASE® now has distributors in 71  
7 countries around the world. We are confident that these efforts will  
8 continue to increase our international business throughout 2013 and  
9 beyond.

10 Domestically we focused on expanding our efforts as the premier total  
11 technology provider in dentistry by intensifying our efforts in selling  
12 digital imaging and CAD/CAM intra oral scanners, which is evidenced  
13 by the 619% growth for our imaging revenues quarter over quarter. Our  
14 Total Technology Solution® is a key component in our strategy to push  
15 forward the adoption of lasers as high-tech dentistry and lasers become  
16 the standard of care in dentistry versus traditional conventional methods,  
17 along with leveraging our significant installed base of diode lasers. We  
18 believe that BIOLASE is the only company in North America that  
19 currently provides a full line of high-tech products, which includes a full  
20 range of all-tissue lasers and diode soft-tissue laser products; CBCT  
21 digital imaging products; and CAD/CAM intraoral scanners. *We are*  
22 *pleased with the level of laser sales so far this year and we expect the*  
23 *aggressive marketing efforts we undertook in the first quarter to begin*  
24 *to pay off further as we move forward in the second quarter and the*  
25 *rest of 2013.*

26 \* \* \*

27 We added cone beam digital imaging to our product offerings in late  
28 2011, and further expanded our imaging product offerings with the

1 addition of CAD/CAM intra-oral scanning in late 2012. *It is promising*  
2 *to see these product lines continue to grow and we expect this positive*  
3 *trend to continue throughout the year as we gain traction in the market*  
4 *and increase our imaging product offerings.* We believe that digital  
5 imaging is a tremendous market opportunity and is an excellent  
6 complement to our core internally developed laser products.

7 The press release also quoted Defendant Furry stating, in pertinent part, as follows:

8 We are very pleased that the Company obtained FDA clearance for the  
9 EPIC soft-tissue diode laser platform for over 80 indications in 19  
10 additional medical markets in April 2013. *We expect that the EPIC 10*  
11 *platform will continue to be a strong contributor to revenue in the*  
12 *second quarter and beyond.* It is gratifying to have obtained this  
13 clearance so quickly.

14 \* \* \*

15 *Based on our projected revenues and expenditures, we expect that our*  
16 *gross margin will return to historical levels in the range of 44% to 46%*  
17 *for the second quarter and 2013 overall.*

18 As to "Financial Outlook," the press release stated:

19 *For the year ending December 31, 2013, the Company is reiterating its*  
20 *revenue expectation of approximately \$68 million to \$72 million. The*  
21 *midpoint of \$70 million represents a 22% increase over 2012 net*  
22 *revenue and would also represent record revenue for the Company.*  
23 *The Company also reiterates that it expects to generate cash from*  
24 *operations for the year ending December 31, 2013.*

25 35. During the conference call held with investors later on the evening of  
26 May 7, 2013, Biolase made more positive comments about the strength of its business  
27 and finances and demand for its product offerings.  
28



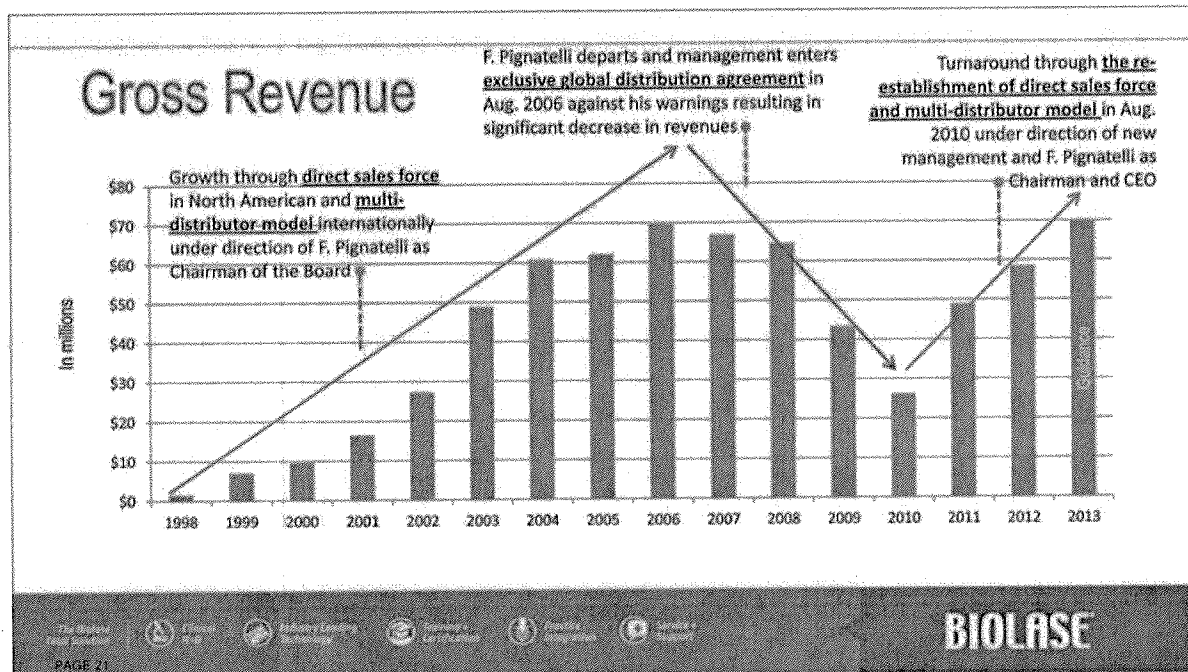
1        36. On March 15, 2013, Biolase filed its quarterly financial report for the  
2 first quarter of 2013, the period ended March 31, 2012, on Form 10-Q with the SEC.  
3 The Form 10-Q stated, in pertinent part, that "\$4.7 million of available borrowings  
4 [remained] under two revolving credit facility agreements" with Comerica; that "to  
5 improve liquidity, management amended the Company's lines of credit increasing the  
6 combined aggregate capacity of borrowings to \$10.0 million" during the quarter; that  
7 "the working capital and borrowings available under the lines of credit should be  
8 sufficient to fund the requirements of the Company" during fiscal 2013; and that "[a]s  
9 of March 31, 2013, the Company was in compliance with [its debt] covenants" under  
10 the Comerica lines of credit. The Form 10-Q was signed and certified as to veracity  
11 under §§302 and 906 of the Sarbanes Oxley Act of 2002 by the Individual  
12 Defendants.

13        37. On May 13, 2013, Biolase filed a Current Report on Form 8-K with the  
14 SEC advising that obtaining the increase in the Comerica lines of credit to \$10 million  
15 had cost the Company \$30,000 and that "certain financial and non-financial  
16 covenants" had been "revised," while stating that the summary of the changes to the  
17 credit agreements was "not complete," and was "qualified in its entirety by reference  
18 to the full text of the agreements or forms of the agreements, which" would not be  
19 disclosed until the Company filed its quarterly financial report on Form 10-Q with the  
20 SEC for the second quarter 2013 ended June 30, 2013, stating "*[r]eaders should*  
21 *review those agreements or forms of agreements for a more complete understanding*  
22 *of the terms and conditions associated with this transaction.*"

23        38. On May 21, 2013, Biolase declared a one-half percent stock dividend  
24 payable on June 28, 2013 to stockholders of record as of June 14, 2013.

25        39. On May 29, 2013, Defendant Furry presented at a Stifel, Nicolaus &  
26 Company investor conference in New York City, making positive statements about  
27 the strength of Biolase's business and finances and demand for its product offerings,  
28 including stating that the Company was still "[p]rojecting revenue of \$68M to \$72M

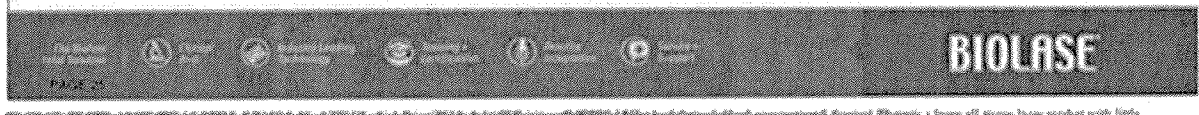
for 2013.” Defendant Furry also presented a slide at the conference stating that approximately 5% of dental practices in the U.S. had adopted laser dental technology and 1.5% internationally, and that “[e]ach incremental 1% market penetration equals over \$600M revenue,” creating a “[d]ental laser market opportunity [of] in excess of \$50B.” Defendant Flurry also presented the following chart using the fiscal 2013 guidance provided to demonstrate the purported success of the Company’s “[t]urnaround through *the reestablishment of direct sales force and multi-distributor model* in Aug. 2010. . . .”:



40. Defendant Furry also presented a chart at the conference titled “Investment Considerations and Expectations” emphasizing that based on then-present demand for the Company’s product offerings being experienced in the market, Defendants believed that there would “be a laser in every dental office in the next 3-5 years”:

## Investment Considerations & Expectations

- Ongoing growth in core WaterLase products with continued trend of adoption.
- High demand for our new EPIC 10 diode soft tissue laser.
- Addressing \$50B dental laser market opportunity:
  - Entering inflection point for diode soft tissue lasers in dentistry.
  - Diode soft tissue lasers have become the standard-of-care for basic procedures.
  - Next step is adoption of all-tissue laser as the standard-of-care in next 3-5 years.
  - There is a large all-tissue laser market with little competition for WaterLase.
  - We strongly believe that there will be a laser in every dental office in next 3-5 years.
  - Vast improvement over conventional surgical devices.
- Significant opportunities in other medical markets.



41. On June 6, 2013, shareholders approved the increase in the 2002 Stock Incentive Plan at the 2013 AGM. Following the AGM, in response to rumors in the market that Defendant Pignatelli was resigning from his positions as Chairman and CEO of Biolase, that same day, Biolase issued a press release stating that the Biolase Board “issued the following statement in response to inquiries from a significant number of shareholders,” which provided that:

There is absolutely no truth to rumors that Federico Pignatelli, Chairman and CEO, would resign from the Board or the Company. Mr. Pignatelli is and will remain Chairman and CEO, as he was elected in August, 2010. He is fully engaged in all aspects of the Company’s business, as he will continue to be.

Mr. Pignatelli stated, “I am fully committed to Biolase now and for the future.”

42. On June 10, 2013, Biolase filed a Current Report on Form 8-K with the SEC advising that on June 6, 2013, the Biolase Board had also entered into a new employment agreement with Defendant Pignatelli pursuant to which “the Board

1 agreed to re-nominate Mr. Pignatelli to serve on the Board at the next three annual  
2 meetings, and to maintain his election as Chairman of the Board until his earlier  
3 resignation or removal, or until he is not elected by the shareholders of the Company  
4 to be a director of the Company.” The Form 8-K also advised that a new Chief  
5 Operating Officer (“COO”) and President had been appointed.

6 43. On June 17, 2013, Biolase issued a press release announcing that its  
7 common stock had been added to two major indices, the Russell 3000 and the Russell  
8 Global Indices, significantly increasing demand for the Company’s stock in the  
9 market as many investors purchase shares based on their inclusion in these indexes.  
10 The Company’s press release issued that day stated that “Index-Following Funds  
11 Expected to Include Approximately 2.5-3.0 Million BIOL Shares via Market Purchase  
12 to Meet Their Rebalancing Requirements by the Actual Rebalancing Date of June 28,  
13 2013” and quoted Defendant Pignatelli and the Company’s incoming President/COO,  
14 stating:

15 “The inclusion of our company in the widely-followed Russell 3000 and  
16 Russell Global Indices *is the result of the substantial growth in our*  
17 *business* since new Management and Board of Directors took over in  
18 August 2010,” said Federico Pignatelli, Chairman and CEO of  
19 BIOLASE. “We know that a number of institutional funds use these  
20 indices for their buying guidelines. Indeed, a May 31, 2013 research  
21 report from Cantor Fitzgerald predicted that if we are included in this  
22 year’s Russell indices, an additional 2.5 million to 3.0 million BIOL  
23 shares will be purchased to be included by June 28th 2013 for Index-  
24 based funds’ compliance with their own guidelines.”

25 “We are honored to be included in the Russell 3000 because of *the*  
26 *statement this makes about investor recognition of the prosperity and*  
27 *growth of BIOLASE*. We also welcome the upcoming comparison that  
28 being in the index will bring us with last year’s top-performing



1 component companies, such as Affymax, Inc., Vanda Pharmaceuticals,  
2 and Mannkind Corp.,” said Alexander Arrow, MD, President and COO  
3 of BIOLASE. *“As our business progresses the way we strategically*  
4 *plan over the next twelve months and beyond, and BIOLASE is*  
5 *recognized by investors for the value we are creating, I anticipate that*  
6 *we will be named one of the year’s top-performers by the time of next*  
7 *year’s Russell Index rebalancing.”*

8 44. On July 27, 2013, Biolase filed a registration statement on Form S-3 with  
9 the SEC stating that Biolase sought to sell up to \$30 million of additional Biolase  
10 shares upon the SEC declaring the registration statement effective.

11 45. The true facts, which were known by Defendants, but concealed from the  
12 investing public during the Class Period, were as follows:

13 (a) Contrary to Defendants’ statements during the Class Period that  
14 dental lasers were “becom[ing] the standard of care in dental practices worldwide”  
15 and feeding demand for Biolase’s product offerings, in reality, because there is little  
16 evidence demonstrating the use of dental lasers (instead of drills) provides long-term  
17 benefits to teeth, and because both children and adults can have cavities filled without  
18 the numbing injections Biolase claims WaterLase products preclude, only 5% of  
19 dental offices use dental lasers and dentists were hesitant to adopt dental lasers –  
20 especially Biolase’s – because of their high costs;

21 (b) Due to the relatively high costs associated with its dental lasers  
22 offerings, Biolase’s efforts to switch to a direct sales model in the U.S. during the  
23 Class Period were failing;

24 (c) Contrary to Defendants’ Class Period statements that they did “not  
25 expect to be troubled with the multitude of extraneous issues that [Biolase] faced  
26 throughout [its] challenging turnaround, including exiting [its] exclusive global  
27 distribution relationship with Henry Schein,” the high debt burden the Company  
28

1 assumed to exit the Henry Schein arrangement, coupled with the onerous terms of the  
2 Comerica lines of credit, were financially handicapping the Company; and

3 (d) Contrary to Defendants' Class Period statements that "the cash  
4 generated from operations and the borrowings available under the lines of credit with  
5 Comerica Bank [would] be sufficient to fund [Biolase's] working capital requirements  
6 for 2013," there was no cash being generated from operations and the Company was  
7 in default of the Comerica lines of credit.

8 46. On August 7, 2013, after the close of trading, Biolase issued a press  
9 release announcing its second quarter 2013 financial results. Rather than the \$15.69  
10 million in revenues Defendants had led the market to expect though their bullish Class  
11 Period statements, Biolase reported revenues of just \$14.2 million – **down 2.74%** from  
12 the \$14.6 million the Company had reported in the fourth quarter 2012. Rather than  
13 the \$.04 per share loss Defendants had led the market to expect, and had reported in  
14 the second quarter of 2012, Biolase reported a loss of \$.06 per share. Attempting to  
15 explain the shortfall, Defendant Pignatelli was quoted in the press release issued that  
16 day, stating:

17 While we experienced 17% net revenue growth for the second quarter of  
18 2013 when compared to the prior year second quarter, **this result was**  
19 **approximately 7% to 10% lower than our internal goal for the quarter.**

20 While we are experiencing growth in all areas of our business, we fell  
21 short of our own internal expectations due to an unusually slow quarter  
22 end for our domestic laser sales, Germany not performing as expected, a  
23 delay in U.S. deliveries of the latest CAD/CAM system model from our  
24 European vendor, and a pair of problems that hurt our sales in Canada.  
25 Severe flooding in June in parts of Canada impeded sales and we did not  
26 receive approval from Health Canada for our EPIC 10, which was  
27 anticipated in the second quarter. Compounding these head winds  
28



1 domestically were the continued uncertainty and confusion over the  
 2 recent implementation of Obamacare and a sharp rise in interest rates.

3 \* \* \*

4 *Concentrating on selling our EPIC 10 diode soft-tissue laser and our*  
 5 *lines of licensed digital imaging and CAD/CAM equipment has caused*  
 6 *a short term negative impact on our traditional margin*, but we expect  
 7 this strategy to result in opportunities to leverage these relationships and  
 8 sell those new customers our flagship WaterLase iPlus.

9 The press release also stated:

10 Gross profit as a percentage of net revenue was 39% as compared to  
 11 45% for the prior year quarter. For the six months ended June 30, 2013,  
 12 gross profit as a percentage of net revenue was 39% as compared to 46%  
 13 for the year period. *The quarter-over-quarter and year-over-year*  
 14 *decreases were primarily due to higher sales of licensed imaging*  
 15 *equipment, which generally carry lower margins than our laser*  
 16 *products, and increased international laser sales, which generally*  
 17 *carry a lower margin than our domestic laser sales.*

18 The August 7, 2013 press release also quoted Defendant Furry stating that “based on  
 19 . . . projected revenue mix and expenditures for the remainder of the year, [Biolase]  
 20 expect[ed] that [its] gross margin [would only increase] to the low- to mid-forties for  
 21 the second half of the year.” The press release also reduced forward Biolase’s  
 22 “Financial Outlook,” stating that “[f]or the year ending December 31, 2013, the  
 23 Company [was now] expecting net revenue to be in the *low end of its guidance range*  
 24 *for the year* of approximately \$68 million to \$72 million” and that “[t]he Company no  
 25 longer expect[ed] to generate cash from operations overall for the year ending  
 26 December 31, 2013.”

27 47. The August 7, 2013 press release also contained the following warning of  
 28 an impending “Liquidity and Capital Resources” crisis at Biolase:

1 As of June 30, 2013, BIOLASE had approximately \$3.8 million in  
2 working capital. Cash and cash equivalents totaled approximately \$2.1  
3 million at June 30, 2013, compared to \$2.5 million at December 31,  
4 2012.

5 Accounts receivable totaled \$11.5 million at June 30, 2013, compared to  
6 \$11.7 million at December 31, 2012. At June 30, 2013, the Company  
7 had two revolving credit facilities totaling \$10.0 million, *with \$1.5*  
8 *million of available borrowings, in excess of the \$6.0 million*  
9 *outstanding.*

10 *On July 26, 2013, the Company filed a registration statement on Form*  
11 *S-3 (the "2013 Registration Statement") with the Securities and*  
12 *Exchange Commission (the "SEC") to register an indeterminate*  
13 *number of shares of common stock, preferred stock, and warrants with*  
14 *a total offering price not to exceed \$30 million.*

15 48. During an earnings conference call held later that evening with investors,  
16 Biolase specifically highlighted the filing of the registration statement as its source of  
17 liquidity when discussing its low cash balance and the situation with its credit facility.

18 49. When Biolase filed its quarterly financial report on Form 10-Q with the  
19 SEC on August 9, 2013, it disclosed for the first time that it had violated the covenants  
20 of its new May 24, 2013 Credit Agreements with Comerica and that Comerica had  
21 agreed to waive its non-compliance. It also disclosed that total stockholder equity had  
22 fallen to just \$8 million, while Biolase owed at least \$6 million to Comerica.

23 50. Then on August 13, 2013, before the opening of trading, Biolase issued a  
24 press release stating that the new May 24, 2013 Comerica "Loan Agreement required  
25 that, as of June 30, 2013, Biolase's earnings before interest, taxes, depreciation, and  
26 amortization could not be less than (\$500,000)," that "Comerica agreed to waive th[at]  
27 requirement" conditioned upon "Biolase and Comerica [being able to] agree upon a  
28 further amendment to the Loan Agreement containing revised financial covenants by

1 September 13, 2013, and further agreed that until such time, the total amount  
2 borrowed under the Loan Agreement [could not] exceed \$7.5 million.”

3 51. As one stock blogger lamented on *Seeking Alpha.com* on August 13,  
4 2013, “[a]s confirmed in the press release, Biolase is now in violation of its bank  
5 covenants. It has around 19 more trading days in which to rectify this situation before  
6 the Comerica deadline. Biolase has already given weak guidance for the remainder of  
7 the year such that any turnaround in financial performance will not be able to repair  
8 the situation with Comerica.”

9 52. On the news of the revenue and earnings misses, the violation of the prior  
10 debt covenants, the current debt covenant default and the \$2.5 million debt limit cut,  
11 the price of Biolase common stock, which had traded as high as \$6.05 per share in  
12 intraday trading during the Class Period, plummeted **more than 80%** from that level to  
13 close at \$1.19 per share on August 13, 2013, **erasing more than \$165 million in**  
14 **market capitalization.**

15 53. The market for Biolase common stock was open, well-developed and  
16 efficient at all relevant times. As a result of these materially false and misleading  
17 statements and omissions as set forth above, Biolase common stock traded at  
18 artificially inflated prices during the Class Period. Plaintiff and other members of the  
19 Class purchased or otherwise acquired Biolase common stock relying upon the  
20 integrity of the market price of Biolase common stock and market information relating  
21 to Biolase, and have been damaged thereby.

22 54. During the Class Period, Defendants materially misled the investing  
23 public, thereby inflating the price of Biolase common stock, by publicly issuing false  
24 and misleading statements and omitting to disclose material facts necessary to make  
25 Defendants’ statements, as set forth herein, not false and misleading. Said statements  
26 and omissions were materially false and misleading in that they failed to disclose  
27 material adverse information and misrepresented the truth about the Company, its  
28 business and operations, as alleged herein.

1        55. At all relevant times, the material misrepresentations and omissions  
2 particularized in this Complaint directly or proximately caused, or were a substantial  
3 contributing cause of, the damages sustained by Plaintiff and other members of the  
4 Class. As described herein, during the Class Period, Defendants made or caused to be  
5 made a series of materially false or misleading statements about Biolase's business,  
6 prospects, and operations. These material misstatements and omissions had the cause  
7 and effect of creating, in the market, an unrealistically positive assessment of Biolase  
8 and its business, prospects, and operations, thus causing the Company's securities to  
9 be overvalued and artificially inflated at all relevant times. Defendants' materially  
10 false and misleading statements during the Class Period resulted in Plaintiff and other  
11 members of the Class purchasing Biolase common stock at artificially inflated prices,  
12 thus causing the damages complained of herein. When the true facts about the  
13 Company were revealed to the market, the inflation in the price of Biolase common  
14 stock was removed and the price of Biolase common stock declined dramatically,  
15 causing losses to Plaintiff and the other members of the Class.

16                    **ADDITIONAL SCIENTER ALLEGATIONS**

17        56. As alleged herein, Biolase and the Individual Defendants acted with  
18 scienter in that they knew that the public documents and statements issued or  
19 disseminated in the name of the Company were materially false and misleading; knew  
20 that such statements or documents would be issued or disseminated to the investing  
21 public; and knowingly and substantially participated or acquiesced in the issuance or  
22 dissemination of such statements or documents as primary violations of the federal  
23 securities laws. As set forth elsewhere herein in detail, these Defendants, by virtue of  
24 their receipt of information reflecting the true facts regarding Biolase, their control  
25 over, and/or receipt and/or modification of Biolase's allegedly materially misleading  
26 statements and/or their associations with the Company which made them privy to  
27 confidential proprietary information concerning Biolase, participated in the fraudulent  
28 scheme alleged herein.

1        57. Defendants were motivated to assure the market that Biolase was  
2 achieving its financial goals and was financially sound enough to continue paying its  
3 outsized dividend of one-half percent per share each quarter. Maintenance of the  
4 outsized dividend was particularly important to Defendant Pignatelli who owned, as of  
5 December 31, 2012, approximately 4.8% of Biolase's common shares outstanding on  
6 a diluted basis, hundreds of thousands of which he had acquired by cashing in stock  
7 options which allowed him to acquire Biolase stock for pennies on the dollar.  
8 Because Defendant Pignatelli receives only a \$1 annual salary, his annual  
9 compensation is highly dependent upon maintenance of the dividend. The need to  
10 issue more stock options to Defendant Pignatelli and others also motivated Defendants  
11 to overstate demand for the Company's products and to conceal the nefarious impact  
12 non-compliance with the Comerica debt covenants could have on Biolase, including  
13 forcing it to engage in dilutive stock sales, in order to obtain shareholder approval of  
14 the increase in the 2002 Stock Incentive Plan.

15        58. Defendants were also motivated to conceal the Company's dramatically  
16 diminished financial performance to obtain inclusion of Biolase's common stock in  
17 two Russell indexes, significantly increasing demand for the Company's stock in the  
18 market and priming the market to facilitate a \$30 million public stock offering. As  
19 one stock blogger on *Seeking Alpha.com* surmised on August 13, 2013, in reality the  
20 Company needed to begin raising capital during the first quarter of 2013 but held off  
21 as it primed the market for a huge stock offering:

22        In reality, management used incredibly poor judgment in waiting to issue  
23 equity. In Q1, the cash balance was already down to \$1 million, such that  
24 the need for an offering should have been very clear. The share price  
25 had traded as high as \$6.00, meaning that over \$20 million could have  
26 been raised at a very attractive price. This would have given Biolase  
27 complete freedom to run its business for the next year or two without any  
28 cash constraints.



**NO SAFE HARBOR**

59. Biolase's "Safe Harbor" warnings accompanying its reportedly forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability. To the extent that projected revenues and earnings were included in the Company's financial reports prepared in accordance with GAAP, including those filed with the SEC on Form 8-K, they are excluded from the protection of the statutory Safe Harbor. *See* 15 U.S.C. §78u-5(b)(2)(A).

60. Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Biolase who knew that the FLS was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

**APPLICATION OF PRESUMPTION OF RELIANCE:  
FRAUD ON THE MARKET**

61. Plaintiff will rely upon the presumption of reliance established by the fraud on the market doctrine in that, among other things:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) The omissions and misrepresentations were material;
- (c) The Company's securities traded in an efficient market;
- (d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and



1 (e) Plaintiff and other members of the Class purchased Biolase  
2 securities between the time Defendants misrepresented or failed to disclose material  
3 facts and the time the true facts were disclosed, without knowledge of the  
4 misrepresented or omitted facts.

5 62. At all relevant times, the market for Biolase securities was efficient for  
6 the following reasons, among others:

7 (a) As a regulated issuer, Biolase filed periodic public reports with the  
8 SEC; and

9 (b) Biolase regularly communicated with public investors via  
10 established market communication mechanisms, including through regular  
11 disseminations of press releases on the major news wire services and through other  
12 wide-ranging public disclosures, such as communications with the financial press,  
13 securities analysts, and other similar reporting services.

#### 14 **LOSS CAUSATION/ECONOMIC LOSS**

15 63. During the Class Period, as detailed herein, Defendants made false and  
16 misleading statements and engaged in a scheme to deceive the market and a course of  
17 conduct that artificially inflated the price of Biolase common stock and operated as a  
18 fraud or deceit on Class Period purchasers of Biolase common stock by  
19 misrepresenting the value of the Company's business and prospects by overstating its  
20 earnings and concealing the significant defects in its internal controls. As Defendants'  
21 misrepresentations and fraudulent conduct became apparent to the market, the price of  
22 Biolase common stock fell precipitously, as the prior artificial inflation came out of  
23 the price. As a result of their purchases of Biolase common stock during the Class  
24 Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages,  
25 under the federal securities laws.

**COUNT I**

**For Violations of §10(b) of the Exchange Act and Rule 10b-5  
Against Defendant Biolase and the Individual Defendants**

64. Plaintiff incorporates ¶¶1-63 by reference.

65. During the Class Period, Defendant Biolase and the Individual Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

66. Defendant Biolase and the Individual Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Biolase securities during the Class Period.

67. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Biolase securities. Plaintiff and the Class would not have purchased Biolase securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

**COUNT II**

**For Violations of §20(a) of the Exchange Act  
Against Defendant Biolase and the Individual Defendants**

68. Plaintiff incorporates ¶¶1-67 by reference.

69. The Individual Defendants acted as controlling persons of Biolase within the meaning of §20(a) of the Exchange Act. By reason of their positions with the

1 Company, and their ownership of Biolase securities, the Individual Defendants had  
2 the power and authority to cause Biolase to engage in the wrongful conduct  
3 complained of herein. Biolase controlled the Individual Defendants and all of the  
4 Company's employees. By reason of such conduct, Defendants are liable pursuant to  
5 §20(a) of the Exchange Act.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

8 A. Determining that this action is a proper class action, designating Plaintiff  
9 as a Lead Plaintiff and certifying plaintiff as a Class representative under Rule 23 of  
10 the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

11 B. Awarding compensatory damages in favor of Plaintiff and the other Class  
12 members against all Defendants, jointly and severally, for all damages sustained as a  
13 result of Defendants' wrongdoing, in an amount to be proven at trial, including  
14 interest thereon;

15 C. Awarding Plaintiff and the Class their reasonable costs and expenses  
16 incurred in this action, including counsel fees and expert fees; and

17 D. Awarding such equitable/injunctive or other relief as deemed appropriate  
18 by the Court.

19 **JURY DEMAND**

20 Plaintiff demands a trial by jury.

21  
22 DATED: August 22, 2013

ROBBINS GELLER RUDMAN  
& DOWD LLP  
DAVID C. WALTON

23  
24 

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19 770/392-0029 (fax)

20 Attorneys for Plaintiff

21 S:\CptDraft\Securities\Cpt Biolase.docx

**CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS**

The undersigned declares, as to the claims asserted under the federal securities laws, that:

Plaintiff has reviewed the initial complaint filed in this action.

Plaintiff did not purchase and/or acquire the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action under the federal securities laws.

Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is not dependent upon execution of this Plaintiff Certification.

Plaintiff's transactions in the security that is the subject of this action during the Class Period are as follows:

Purchases:

<u>Name of Company</u>	<u>Date(s) Purchased</u>	<u># Shares Purchased</u>	<u>Cost</u>
BIOL	6/21/13	85	\$316.20
	8/1/13	22	\$78.54

Sales:

<u>Name of Company</u>	<u>Date(s) Sold</u>	<u># Shares Sold</u>	<u>Proceeds</u>
BIOL	N/A - Still own above shares		

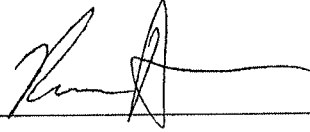
During the three (3) years prior to the date of this certification, Plaintiff has not sought to serve or served as a class representative in an action filed under the federal securities laws except for the following (if any):

Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of August, 2013 in Seabrook, Texas.  
City State

(Signature) X



(Print Name)

Brady Adams



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Josephine Staton Tucker and the assigned Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

SACV 13-01300 JST (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 23, 2013

Date

By D. Vo

Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

☐ Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

☒ Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

☐ Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) BRADY ADAMS, Individually and on Behalf of All Others Similarly Situated		<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) BIOLASE, INC., FEDERICO PIGNATELLI and FREDERICK D. FURRY																																																																																																																									
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) David C. Walton Robbins Geller Rudman & Dowd LLP 655 West Broadway, Suite 1900 San Diego, CA 92101      619/231-1058		(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)																																																																																																																									
<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;">           Citizen of This State      <input type="checkbox"/> PTF    <input type="checkbox"/> DEF    1            Citizen of Another State      <input type="checkbox"/> 2    <input type="checkbox"/> 2            Citizen or Subject of a Foreign Country      <input type="checkbox"/> 3    <input type="checkbox"/> 3         </td> <td style="width: 50%; vertical-align: top;">           Incorporated or Principal Place of Business in this State      <input type="checkbox"/> 4    <input type="checkbox"/> 4            Incorporated and Principal Place of Business in Another State      <input type="checkbox"/> 5    <input type="checkbox"/> 5            Foreign Nation      <input type="checkbox"/> 6    <input type="checkbox"/> 6         </td> </tr> </table>		Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF    1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6																																																																																																																						
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<b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    (Check "Yes" only if demanded in complaint.) <b>CLASS ACTION under F.R.Cv.P. 23:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT:</b> \$ _____																																																																																																																											
<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS    15 U.S.C. §§78j(b) and 78t(a)																																																																																																																											
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FOR OFFICE USE ONLY: Case Number: **SACV 13 - 01300 JST (FEMx)**

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

## CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Seabrook, Texas

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**NOTE: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

\*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

## X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):



DATE: August 22, 2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))